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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 DAWN RUTHERFORD,

12 Plaintiff,

13 v.

14 SCENE 7, INC. LONG TERM DISABILITY  
15 PLAN, PRUDENTIAL INSURANCE  
16 COMPANY OF AMERICA,

17 Defendants.  
18

Case No. CV 07-6426 (WHA)

**DEFENDANTS' ANSWER TO  
COMPLAINT**

19 Defendants PRUDENTIAL INSURANCE COMPANY OF AMERICA  
20 AND SCENE 7, INC. LONG TERM DISABILITY PLAN ("Defendants"), hereby  
21 answer the Complaint of Plaintiff DAWN RUTHERFORD ("Plaintiff") in  
22 accordance with the numbered paragraphs therein:

23 1. Responding to paragraph 1 of the Complaint, Defendants admit that  
24 the action arises under the Employee Retirement Income Security Act of 1974  
25 ("ERISA"), 29 USC §1001 et seq. Defendants admit that this Court has  
26 jurisdiction of the claim under 29 USC Section 1132(e); defendants further admit  
27 that plaintiff was at all times a resident of the State of California within the  
28 Northern District of the State of California. Defendants admit that the incident

1 occurred within this Court's jurisdiction. Defendants deny that that they failed and  
2 refused to perform their obligations.

3         2. Responding to paragraph 2 of the Complaint, Defendants admit that  
4 plaintiff was employed by Scene 7, Inc. and was a participant in the Long Term  
5 Disability Plan ("the Plan") offered by Scene 7, Inc. Defendants admit that the  
6 Plan is an employee benefit plan as defined by 29 USC §1002(3). Defendants  
7 admit The Plan was funded through the purchase by Scene 7 of a group long term  
8 disability insurance policy issued by defendant Prudential Insurance Company of  
9 America.

10         3. Responding to paragraph 3 of the Complaint, Defendants admit that  
11 plaintiff has a mental illness. Defendants deny that she is eligible for benefits  
12 under the Plan.

13         4. Responding to paragraph 4 of the Complaint, Defendants admit that  
14 plaintiff submitted to Prudential a claim for benefits under the Plan in August of  
15 2001.

16         5. Responding to paragraph 5 of the Complaint, Defendants admit that  
17 Prudential approved payment of benefits for plaintiff's mental illness and paid  
18 benefits under the Plan. Defendants admit that Prudential notified plaintiff on  
19 August 26, 2003, that the benefits would be discontinued based upon the plan  
20 terms. Except as specifically admitted, Defendants deny each and every allegation  
21 contained in said paragraph.

22         6. Responding to paragraph 6 of the Complaint, Defendants admit that  
23 on September 1, 2003, plaintiff's spouse sent defendant Prudential a letter,  
24 requesting reconsideration of Prudential's decision to discontinue benefits.

25         7. Responding to paragraph 7 of the Complaint, Defendants admit that  
26 plaintiff's counsel wrote to Prudential on September 30, 2003, requesting a copy of  
27 the administrative record. Except as specifically admitted, Defendants deny each  
28 and every allegation contained in said paragraph.

1           8.     Responding to paragraph 8 of the Complaint, Defendants admit that  
2 on December 3, 2003, plaintiff's counsel wrote to Prudential and requested further  
3 information and documents claiming that the previous packet was missing  
4 information. Except as specifically admitted, Defendants deny each and every  
5 allegation contained in said paragraph.

6           9.     Responding to paragraph 9 of the Complaint, Defendants admit that  
7 on July 27, 2004, Prudential sent plaintiff's counsel a letter in which it upheld its  
8 decision to discontinue benefits under the policy. Except as specifically admitted,  
9 Defendants deny each and every allegation contained in said paragraph.

10          10.    Responding to paragraph 10 of the Complaint, Defendants admit that  
11 on July 28, 2005, plaintiff's counsel wrote to Prudential requesting a further  
12 administrative appeal regarding the termination of plaintiff's benefits.

13          11.    Responding to paragraph 11 of the Complaint, Defendants admit that  
14 on November 3, 2006, Prudential wrote to plaintiff's counsel advising of its  
15 determination to uphold its decision to terminate the benefits under the Plan.  
16 Except as specifically admitted, Defendants deny each and every allegation  
17 contained in said paragraph.

18          12.    Responding to paragraph 12 of the Complaint, Defendants admit that  
19 plaintiff's counsel wrote to Prudential on May 4, 2007, undertaking yet a further  
20 administrative appeal of the termination of plaintiff's benefits.

21          13.    Responding to paragraph 13 of the Complaint, Defendants admit that  
22 Prudential on July 20, 2007, Prudential wrote to plaintiff's counsel advising of its  
23 determination to uphold the termination of benefits under the Plan. Except as  
24 specifically admitted, Defendants deny each and every allegation contained in said  
25 paragraph.

26          14.    Responding to paragraph 14 of the Complaint, Defendants admit that  
27 plaintiff's counsel wrote to Prudential on July 30, 2007 requesting a copy of the  
28 claim file and the group insurance policy.

1           15.    Responding to paragraph 15 of the Complaint, Defendants admit that  
2 Prudential responded to plaintiff's July 30, 2007 letter on August 13, 2007 and  
3 provided a complete copy of the claim file. Defendants admit that plaintiff wrote a  
4 letter to Prudential on August 22, 2007 notifying that there were missing  
5 documents.

6           16.    Responding to paragraph 16 of the Complaint, Defendants admit that  
7 Prudential wrote a letter to plaintiff's counsel transmitting a complete copy of  
8 plaintiff's Short Term and Long Term Disability policies. Defendants admit that  
9 plaintiff's counsel wrote to Prudential on November 16, 2007 claiming there were  
10 missing documents and that the policy provided pertained to "Goodhome, Inc."  
11 Defendants admit that plaintiff's counsel reiterated his previous request for  
12 documents.

13           17.    Responding to paragraph 17 of the Complaint, Defendants admit that  
14 on November 28, 2007, Prudential wrote to plaintiff's counsel indicating that they  
15 had previously provided counsel with a copy of the Short Term Disability and  
16 Long Term Disability Policies and further that the policy name had changed in  
17 February, 2001 from Goodhome, Inc to Scene 7, but that the policy exclusions did  
18 not change. Except as specifically admitted, Defendants deny each and every  
19 allegation contained in said paragraph.

20           18.    Responding to paragraph 18 of the Complaint, Defendants admit that  
21 plaintiff exhausted all administrative remedies. Except as specifically admitted,  
22 Defendants deny each and every allegation contained in said paragraph.

23           19.    Responding to paragraph 19 of the Complaint, Defendants refer to and  
24 incorporate their Response to paragraphs 1 through 18 as though fully set forth  
25 herein.

26           20.    Responding to paragraph 20 of the Complaint, Defendants deny each  
27 and every allegation contained therein.

28           21.    Responding to paragraph 21 of the Complaint, Defendants deny each

1 and every allegation contained therein.

2 22. Responding to paragraph 22 of the Complaint, Defendants refer to and  
3 incorporate their Response to paragraphs 1 through 21 as though fully set forth  
4 herein.

5 23. Responding to paragraph 23 of the Complaint, Defendants deny each  
6 and every allegation contained therein.

7 24. Responding to paragraph 24 of the Complaint, Defendants deny each  
8 and every allegation contained therein.

9  
10 **AFFIRMATIVE DEFENSES**

11 **FIRST AFFIRMATIVE DEFENSE**

12 25. The Complaint and each of the claims that are asserted against  
13 Defendants fail to set forth facts sufficient to constitute a claim for relief against  
14 Defendants.

15 **SECOND AFFIRMATIVE DEFENSE**

16 26. Each and every act or statement done by Defendants, their officers,  
17 employees or agents, with reference to the matters at issue, were made pursuant to  
18 and consistent with the terms of the Short Term and Long Term Disability plan.

19 **THIRD AFFIRMATIVE DEFENSE**

20 27. Defendants had a contractual duty to investigate Plaintiff's claim and  
21 to determine whether it was properly payable under any contract of insurance.  
22 Defendants, in discharging that duty, acted properly at all times herein relevant.

23 **FOURTH AFFIRMATIVE DEFENSE**

24 28. Each and every act or statement done or made by Defendants, their  
25 officers, employees, agents or insurers with reference to the matters at issue, was a  
26 good faith assertion of the rights and obligations of defendants and, therefore, was  
27 privileged and justified.  
28



**FIFTH AFFIRMATIVE DEFENSE**

29. Defendants acted reasonably since plaintiff did not satisfy the terms of the Long Term Disability plan for continued receipt of long-term disability benefits.

**SIXTH AFFIRMATIVE DEFENSE**

30. Defendants are informed and believe and thereon allege that Plaintiff has failed to comply with all the conditions precedent, and subsequent, necessary to the existence of coverage under the plan at issue.

**SEVENTH AFFIRMATIVE DEFENSE**

31. Plaintiff is estopped and barred from asserting any of the claims set forth in the Complaint.

**EIGHTH AFFIRMATIVE DEFENSE**

32. Plaintiff has, by conduct, agreement, or otherwise, and with knowledge of the matters set forth in the Complaint, accepted the benefits of any acts or omissions on the part of Defendants and Plaintiff has waived any causes of action set forth in the Complaint.

**NINTH AFFIRMATIVE DEFENSE**

33. Plaintiff's Complaint does not state the underlying claims made against defendants with sufficient particularity to enable defendants to determine all of its defenses (including defenses based upon the terms, conditions or exclusions of the alleged Plan at issue). Defendants therefore reserve their rights to assert all further applicable defenses to the Complaint once the precise nature of such claims are determined through discovery or otherwise.

**TENTH AFFIRMATIVE DEFENSE**

34. Plaintiff's Second Cause of Action for Injunctive Relief is improper because plaintiff has an adequate remedy under her first cause of action for recovery of employee benefits pursuant to ERISA § 502(A)(1)(B); 29 USC §1132(A) (1)(B).

**ELEVENTH AFFIRMATIVE DEFENSE**

35. Plaintiff received disability payment for her mental illness under the policy, for the limited pay period of 24 months. Plaintiff did not meet the conditions for continued disability benefits under the policy beyond the 24 month period.

WHEREFORE, Defendants pray for judgment as follows:

1. That judgment be entered in favor of defendants;
2. That Plaintiff takes nothing;
3. For costs and expert witness fees;
4. For reasonable attorneys' fees; and
5. For such other and further relief as this Court may deem just and proper.

DATED: April 23, 2008

GORDON & REES LLP

By: /s/ Ronald K. Alberts  
Ronald K. Alberts  
Tad A. Devlin  
Attorneys for Defendants  
SCENE 7, INC. LONG TERM  
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